

# e-Competitions

## Antitrust Case Laws e-Bulletin

### Preview

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The Turkish Competition Authority accepts for the first time in the preliminary investigation stage the commitments proposed by a glass manufacturing company to remedy the competition concerns relating to abuse of dominance in the glass production market (*Şişecam*)

**UNILATERAL PRACTICES, DOMINANCE (ABUSE), DOMINANCE (NOTION), DISTRIBUTION/RETAIL, AGREEMENT (NOTION), MARKET SHARING, MANUFACTURING, REMEDIES (ANTITRUST), TURKEY, BUYER POWER, ANTICOMPETITIVE OBJECT / EFFECT**

Turkish Competition Authority, *Şişecam*, Decision no. 21-51/712-354, 21 October 2021 (Turkish)

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### e-Competitions News Issue Preview

The Turkish Competition Board (“**Board**”) decided that *Şişecam*, through its subsidiary *Çevre Sistemleri*, has abused its dominant position in the market for glass manufacturing, by way of excluding its competitors in the upstream market for recycled glass, utilized its buyer power to narrow the margin between its competitors’ input and output and aggravated their activities through restricting their supply of waste glass.

This decision marks the first time where the Board approved the commitments submitted in the preliminary investigation stage, since the Amendment Law was enacted.

### Background

The preliminary investigation against *Şişecam* and its subsidiary *Çevre Sistemleri* was initiated on 22.10.2020 upon the submission of a confidential complaint [7], where it was indicated that *Çevre Sistemleri* included certain clauses in its investment contracts with the recycling facilities which stipulate that a significant amount of products must be supplied to *Çevre Sistemleri* on an annual basis and if the respective amount is not met, certain penalties are foreseen. It was indicated that this in turn could translate into a *de facto* exclusive supply arrangement. In addition, the complaint also included that *Şişecam*’s leading position in the flat glass market

enabled it to steer all of the raw material in the glass container market to its own factories and Şişecam's powerful position in the glass container market enabled it determine furnace-ready cullet purchase prices unilaterally.

Şişecam's main field of activity involves the production of flat glass and glass containers in which furnace-ready cullet is used for the glass production. The main input of furnace-ready cullet is waste glass which is produced from flat glass wastage. The decision underlines that Şişecam is deemed as the most significant buyer for the input of the furnace-ready cullet in the market.

Pursuant to Regulation on Packaging Waste Control published on 27.12.2017, package producers are obliged to use recycled secondary raw materials, thereby increasing demand in the recycled glass industry over the years. Şişecam funds four main recycling facilities for collection of waste glass and infrastructure for furnace-ready cullet under certain loan arrangements.

## Competition Concerns in the Preliminary Investigation Report

In scope of the preliminary investigation, the Turkish Competition Authority (the "Authority") found that Şişecam held a dominant position in the market for glass containers while Şişecam's subsidiary Çevre Sistemleri held a dominant position in the market for furnace-ready cullet. The Board indicated that Şişecam has the power to control both the prices of furnace-ready glass in the upstream market and the prices of the input material, that is waste glass. As result of the aggressive pricing policies of Çevre Sistemleri, the price of waste glass (input) increased, which in turn narrowed the margin between the input and output prices (furnace-ready cullet). The Board indicated that through the said practice, the competitors that are the suppliers of furnace-ready cullet are prevented from making profits, thereby excluded from the market. The Board ultimately evaluated that Şişecam's practice through Çevre Sistemleri is deemed as "price squeezing" behavior.

With respect to the exclusive conduct, the Board also evaluated that, Çevre Sistemleri prevented recycling facilities from competing in the procurement of waste glass by placing bids with high prices in the waste glass tenders . Furthermore the Board assessed that, Çevre Sistemleri included certain provisions in its contracts with the suppliers which prevented them from providing waste glass to recycling facilities other than Çevre Sistemleri . As a result, the Board found that Şişecam violated article 6 of the Law No. 4054 on Protection of Competition Law ("Law No. 4045" ) and therefore abused its dominant position in the market.

## Commitments

The commitments proposed by Şişecam in order to address competition concerns raised during the course of the preliminary investigation included, inter alia, the following:

Terminating all procurement of unprocessed flat glass used in furnace-ready cullet from any undertaking that is outside the scope of Şişecam's economic integration (from third parties operating domestically), for five years beginning from the service of the short decision,

- Terminating all procurement of unprocessed glass container products used in furnace-ready cullet from any undertaking that is outside the scope of Şişecam's economic integration (from third parties operating domestically), for two years beginning from the notification of the short decision and restricting dumping of waste glass containers up to 10,000 ton for the first year, 20,000 ton for the second year and 40,000 ton for the third year,

- Terminating procurements of flat waste glass (for five years) and waste glass container (for two years) from undertakings established abroad (from third parties operating abroad) and outside the scope of Şişecam's Economic Integration,
- The amount of furnace-ready glass procured from third parties shall not exceed 35 % of the overall procured amount from third parties applicable for each financial year, lasting for five years from the notification of the short decision,
- A copy of notification made via notary public regarding the termination of supply of waste glass contracts entered into force between Şişecam economic integration and third party undertakings, to be submitted to the Authority, lasting for five years,
- A notification to be made to the Authority to observe the commitments that are being implemented with respect to transactions such as transfer, lease etc. over the main elements of recycling activities (i.e facility, machinery-equipment) , lasting for five years,
- Annual submission of independent audit reports to the Authority prepared with the purpose of fulfillment of the commitments, for five years.

All in all, months of deliberations, the commitments offered by Şişecam were deemed to address the concerns raised by the Authority, and hence, the Board accepted Şişecam's commitments within nine days from the submission of the final commitments proposal. On this note, the Board rendered a landmark decision where the commitments offered by an undertaking were accepted within the preliminary investigation period for the first time.

[1] The Şişecam decision dated 22.10.2020 and 20-47/642-M numbered.